

EDWARD H. HOWE
FRED HUFF
GERALD A. STRAUSS

IBLA 81-1069, 81-1070
81-1073

Decided September 8, 1983

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, dismissing protests with respect to wilderness inventory designations NM 030-052, et al.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act -- Words and Phrases

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

2. Administrative Procedure: Adjudication -- Administrative Procedure: Administrative Review -- Appeals -- Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

APPEARANCES: Edward H. Howe, Fred Huff, and Gerald A. Strauss, pro sese; Dale D. Goble, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These appeals are taken from decisions of the New Mexico State Office, Bureau of Land Management (BLM), denying protests on wilderness inventory units. 1/

Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), provides for Secretarial review of "roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) * * * as having wilderness characteristics described in the Wilderness Act of September 3, 1964" and for recommendations to the President "as to the suitability or nonsuitability of each such area or island for preservation as wilderness." The wilderness review of the public lands pursuant to FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. (See BLM "Wilderness Inventory Handbook" (WIH) dated September 27, 1978, at 3.) The first phase is further divided into an initial and an intensive inventory stage. The initial inventory consists of the identification and evaluation of inventory units and a final decision regarding each unit, determining whether it clearly and obviously does not meet the criteria as a Wilderness Study Area (WSA) or whether it may possibly meet such criteria. Those units which may possibly meet such criteria are subjected to an intensive inventory and a final decision is then made on which units to designate as WSA's.

According to the WIH 1978 at page 5, "The word roadless refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." 2/

1/ Designations of the New Mexico Wilderness study areas were published in the Federal Register, 45 FR 75590, Nov. 14, 1980. The units involved in each appeal are as follows:

IBLA 81-1069 Edward H. Howe	IBLA 81-1070 Fred D. Duff
NM-030-065	NM-030-065
NM-030-053	NM-030-053
NM-030-063	NM-030-052
NM-030-052C	
NM-030-052A	IBLA 81-1073 Gerald Strauss
NM-030-074	NM-030-052

2/ The WIH also offers definitions of the following related terms:

"'Improved and maintained' -- Actions taken physically by man to keep the road open to vehicular traffic. 'Improved' does not necessarily mean formal construction. 'Maintained' does not necessarily mean annual maintenance.

"'Mechanical means' -- Use of hand or power machinery or tools.

"'Relatively regular and continuous use' -- Vehicular use which has occurred and will continue to occur on a relatively regular basis. Examples are: access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims."

The chief issue in the cases before us is whether certain routes were correctly designated as "ways" rather than "roads" by BLM.

The units listed as being in controversy here are: NM-030-052, NM-030-052A, NM-030-052C, NM-030-53, N,-030-063, NM-030-065, and NM-030-074. NM-030-065 (Las Uvas Mountains) was the subject of an appeal by Wilford Cothorn (IBLA No. 81-1066). In that case, as in the cases at bar, the issue was whether the Rustler Fire Trail within that WSA was a way or a road. We concluded that the appellant had made a sufficient showing to cast doubt on BLM's determination that the route was a way and consequently remanded the case for further consideration. Therefore, unit NM-030-065 will not be discussed herein.

[1] An appeal whose purpose is to show the existence of roads in WSA's should include allegations of who improved the routes at issue by mechanical means, who maintains the routes by mechanical means, and when such improvement and maintenance last occurred. Ken Brower, 67 IBLA 124 (1982).

Appellants Strauss and Huff protested the designation of a route in WSA NM-030-052 as a way rather than a road. Appellant Strauss says that the route has been maintained since he purchased his ranch. Appellants generally contend that BLM did not adequately consider the evidence and improperly applied the governing criteria in its designation.

As to NM-030-052A, appellant Howe states that the route there in question "has a few widely scattered indications of improvement, including gates and a few localized indications of rock removal sometime in the past." Appellant concedes, however, that "there is little if any direct evidence of subsequent maintenance anywhere along the route" (Statement of Reasons at 8). With respect to the route in issue in NM-030-053, appellant Howe states that a gate was installed, that very little and infrequent maintenance would be required, and that such maintenance could have been done with hand tools (Statement of Reasons at 10). Without reference to specific WSA's, appellant Howe states that BLM correctly decided that routes in three units were roads.

Appellants' showings on appeal are insufficient under applicable criteria to warrant disturbing BLM's route designations. A vehicle route, once improved by mechanical means, must receive maintenance by mechanical means as needed in order to qualify as a road. Appellants do not establish error by alleging mechanical improvement and mechanical maintenance in the past if mechanical maintenance has not been made in some time. Appellants' submissions are limited to sketchy allegations. The contention that a route is, in fact, a road must be supported by proof of mechanical improvement and mechanical maintenance, inter alia. Asarco Inc., 64 IBLA 50, 56 (1982). Lack of need for maintenance due to stability of soil or for other reasons must be alleged and proved. Sierra Club, 62 IBLA 367, 369-70 (1982).

Appellants' remaining arguments concerning wilderness characteristics are cursory and have previously been evaluated by BLM. An appellant seeking reversal of a decision to include or exclude land from a WSA must show that

the decision below was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166, 171 (1981); Richard T. Leumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed except as to unit NM-030-065 (IBLA 81-1066) which was remanded in a previous decision.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

